

1 ROBERT T. EGLET, ESQ.
 Nevada Bar No. 3402
 2 ROBERT M. ADAMS, ESQ.
 Nevada Bar No. 6551
 3 ARTEMUS W. HAM, ESQ.
 Nevada Bar No. 7001
 4 G. ASA GINAPP, ESQ.
 Nevada Bar No. 8467
 5 **EGLET WALL**
 400 South Fourth Street, Suite 600
 7 Las Vegas, NV 89101
 8 (702) 450-5400
Attorneys for Non-Infected Plaintiffs

9
 10 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF NEVADA

11 VICTOR DUNN, et al.,

12 Plaintiffs.

14 vs.

15 ENDOSCOPY CENTER OF SOUTHERN
 16 NEVADA, et al.

18 Defendants.

Case No.: 2:11-CV-00560-RLH-PAL

**MOTION FOR AN EXTENSION OF
 TIME PURSUANT TO FRCP 6(b)(1)
 AND LR 6-1 TO FILE
 OPPOSITIONS
 ON ORDER SHORTENING TIME**

(First Request)

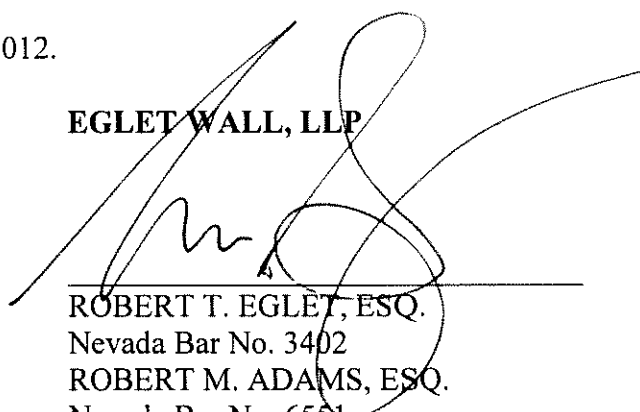
19 Plaintiffs, in the VICTOR DUNN consolidated matter, by and through their attorneys of
 20 record, ROBERT T. EGLET, ESQ., ROBERT M. ADAMS, ESQ., ARTEMUS W. HAM, ESQ.,
 21 and G. ASA GINAPP, ESQ., of the law firm EGLET WALL, submit their Motion for an
 22 Extension of Time Pursuant to FRCP 6(b)(1) and LR 6-1 to File Oppositions to Defendants'
 23 Motion for Judgment on the Pleadings on Grounds of Federal Preemption and Defendants'
 24 Motion for Judgment on the Pleadings or in the Alternative, for Summary Judgment on State
 25 Law Grounds on the bases that Plaintiffs respectfully suggest that the gravity and complexity of
 26 the issues raised by the Defendants' motion deserve the kind of thorough evaluation and
 27
 28

1 preparation that can only accomplished by extending the deadline for Plaintiffs' Oppositions.
2 Justice requires the extension of Plaintiffs' Opposition deadline because approximately 3,600
3 Plaintiffs' claims against the Product Defendants are at stake in these two motions and the
4 Defendants' Motions at issue address the most complicated points of each of Plaintiffs' causes
5 of action, including impossibility preemption under *PLIVA v. Mensing*, 131 S. CT. 2567 (2011).
6

7 This Motion is based upon the following Memorandum of Points and Authorities, the
8 papers and pleadings on file herein, and any oral argument the Court is willing to entertain at a
9 hearing in this matter.

10 DATED this 8th day of February, 2012.

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12 **EGLET WALL, LLP**

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15 
16 **ROBERT T. EGLET, ESQ.**

Nevada Bar No. 3402

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

ARTEMUS W. HAM, ESQ.

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Attorneys for Non-Infected Plaintiffs



AFFIDAVIT OF G. ASA GINAPP, ESQ. IN SUPPORT OF
ORDER SHORTENING TIME PURSUANT TO LR 6-1

STATE OF NEVADA)
) s.s.
COUNTY OF CLARK)

G. ASA GINAPP, ESQ., being first duly sworn, under oath, deposes and says that:

1. Affiant is duly licensed to practice law in the State of Nevada and is an attorney with the firm of Eglet Wall, counsel for Plaintiffs in this matter and all statements made herein are based on personal knowledge, unless expressly made upon information and belief;

2. Defendants Sicor Inc., Teva Parenteral Medicines, Inc., formerly known as Sicor Pharmaceuticals, Inc., Baxter Healthcare Corp., and McKesson Medical-Surgical Inc. (the "Product Defendants") filed two (2) separate dispositive motions seeking the dismissal or summary judgment of ALL of the approximately 3,600 Plaintiffs' claims against them;

3. Both Motions were filed on January 24, 2012, and this Court issued a briefing schedule that set forth February 10, 2012, as the due date for both of Plaintiffs' Oppositions;


4. On February 6, 2012, Affiant, along with Artemus Ham, Esq. spoke with Max Corrick, Esq., local counsel for the Product Defendants and requested an extension to file the Oppositions. Mr. Corrick stated that he would pass the request "up the chain" to the Product Defendants' counsel "back East;"

5. On February 7, 2012, Affiant sent two electronic correspondences to Mr. Corrick inquiring about the status of the requested extension and to both correspondences Mr. Corrick indicated that he had not heard from counsel on the east coast and that he inform Affiant. *See Exhibit 1*, attached to the Motion;

MEMORANDUM POINTS AND AUTHORITIES

Good cause exists to extend Plaintiffs' deadline to Oppose Defendants' Motion for Judgment on the Pleadings on Grounds of Federal Preemption and Defendants' Motion for Judgment on the Pleadings or in the Alternative, for Summary Judgment on State Law Grounds. The Product Defendants are seeking to dispose of all approximately 3,600 Plaintiffs' claims against them both (collectively) under impossibility preemption and (individually) according to various state law grounds attacking both the substance of the Plaintiffs' claims and their damages. Defendants' Motion for Judgment on the Pleadings is substantively 24 pages long and addresses whether any of Plaintiffs causes of action are viable in light of the United States Supreme Court's application of impossibility preemption to generic drug manufacturers in *PLIVA v. Mensing*, 131 S. CT. 2567 (2011). Defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment on State Law Grounds is substantively 30 pages long and attacks each of Plaintiffs' causes of action and three elements of damages on various grounds. The issues addressed in the fifty-four (54) pages of briefing supporting the Motion is not basic first semester torts and second semester Constitutional law. The issues presented in both these motions are new, evolving, and groundbreaking.

While the simple number of motions at issue here – two (2) – does not seem to raise any immediate concern. However, it is undeniable that these motions could have an extraordinarily wide impact on the claims brought by these non-infected Plaintiffs. The breadth of potential of effect of the Product Defendants' Motions requires that counsel devote more than the “minimal” time required to fulfill the ethical and legal duties of a counselor at law. Plaintiffs' counsels' time investment is not simply self-serving because this Court will also benefit a

 **NOTARY PUBLIC**
STATE OF NEVADA
County of Clark
KATHRYN D. HARDESTY
Appt. No. 92-0380-1
My Appt. Expires July 30, 2012

1 Memorandums of Points and Authorities that are more accurate, more refined, and deserving of
2 this Court's consideration on such weighty issues.

3 To devote the appropriate amount of time and resources to this issue, Plaintiffs
4 respectfully request that the deadline to file Oppositions to both Defendants' Motion for
5 Judgment on the Pleadings on Grounds of Federal Preemption and Defendants' Motion for
6 Judgment on the Pleadings or in the Alternative, for Summary Judgment on State Law Grounds
7 to March 12, 2012.
8

9 Dated this 8th day of February, 2012.

10
11 **EGLET WALL, LLP**

12 
13 **ROBERT T. EGLET, ESQ.**

14 Nevada Bar No. 3402

15 **ROBERT M. ADAMS, ESQ.**

16 Nevada Bar No. 6551

17 **ARTEMUS W. HAM, ESQ.**

18 Nevada Bar No. 7001

19 **G. ASA GINAPP, ESQ.**

20 Nevada Bar No. 8467

21 **EGLET WALL**

22 400 South Fourth Street, Suite 600

23 Las Vegas, NV 89101

24 (702) 450-5400

25 *Attorneys for Non-Infected Plaintiffs*

26 **IT IS SO ORDERED.**

27 
28 **UNITED STATES DISTRICT JUDGE**

DATED: February 9, 2012

 **EGLET WALL**
Trial Attorneys

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I hereby certify that I am an employee of EGLET WALL and that on the 8 day of February, 2012, I caused the forgoing **MOTION FOR AN EXTENSION OF TIME TO FILE OPPOSITIONS ON ORDER SHORTENING TIME** to be served by depositing it for mailing, postage prepaid, at Las Vegas, Nevada, or via hand-delivery as indicated below addressed as follows:

James R. Olson, Esq.
Michael E. Stoberski, Esq.
Max E. Corrick, Esq.
Matthew C. Wolf, Esq.
OLSON CANNON GORMLEY & DESRUISSEAU
9950 West Cheyenne Avenue
Las Vegas, NV 89129

David M. McDonald, Esq.
MCDONALD DEVIN, P.C.
3800 Renaissance Tower
1201 Elm Street
Dallas, TX 75270

Brent Schoel
SCHUERING ZIMMERMAN SCULLY & DOYLE
400 University Avenue
Sacramento, CA 95825

Christine M. Booze
ATKIN WINNER & SHERROD
117 S. Rancho Dr.
Las Vegas, NV 89102


An employee of EGLET WALL



EXHIBIT “1”

Asa Ginapp <aginapp@egletwall.com>

Wed, Feb 8, 2012 at 2:35 PM

G. Asa Ginapp, Esq.
EGLET WALL, LLP
400 S. Fourth Street, Ste. 600
Las Vegas, NV. 89101
702-450-5400
Fax: 702- 450-5451
aginapp@egletwall.com

Begin forwarded message:

From: "Asa Ginapp" <aginapp@egletwall.com>
Date: February 8, 2012 9:28:04 AM PST
To: "Max Corrick" <mcorrick@ocgd.com>
Subject: Re: Any word

Max,

I know that your hands are tied in this regard and just to give you a heads up, but if you haven't heard from back East by noon, I'll have to file an emergency motion to extend time to Oppose the Non-Infected Motions. Otherwise, I hope your morning is going well.

Thanks,

G. Asa Ginapp, Esq.
EGLET WALL, LLP
400 S. Fourth Street, Ste. 600
Las Vegas, NV. 89101
702-450-5400
Fax: 702- 450-5451
aginapp@egletwall.com

On Feb 7, 2012, at 4:36 PM, "Max Corrick" <mcorrick@ocgd.com> wrote:

I've made another request and still nothing. I hope to hear something tonight. I'll let you know as soon as I hear.

—Original Message—

From: Asa Ginapp [<mailto:aginapp@egletwall.com>]

Sent: Tuesday, February 07, 2012 4:35 PM

To: Max Corrick

Subject: Re: Any word

So, I'm assuming, still no word?

G. Asa Ginapp, Esq.

EGLET WALL, LLP

400 S. Fourth Street, Ste. 600

Las Vegas, NV. 89101

702-450-5400

Fax: 702- 450-5451

aginapp@egletwall.com

On Feb 7, 2012, at 10:47 AM, "Max Corrick" <mcorrick@ocgd.com> wrote:

I passed the note on yesterday right after our call but I haven't heard anything back. As soon as I do I will let you know.

—Original Message—

From: Asa Ginapp [mailto:aginapp@egletwall.com]

Sent: Tuesday, February 07, 2012 10:34 AM

To: Max Corrick

Subject: Any word

On the non-infected Opps?

G. Asa Ginapp, Esq.

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